

SUMMARY

BERKELEY CITY COUNCIL MEETING

TUESDAY, OCTOBER 24, 2006

7:00 P.M.

Preliminary Matters

Roll Call: 7:04 p.m. All present.

Ceremonial Matters:

1. Proclamation declaring October 24, 2006 United Nations Day.
2. Proclamation presented to George Smoot, of Lawrence Berkeley National Laboratory, commending his award of the 2006 Nobel Prize in Physics and declaring December 10, 2006 George Smoot Day.
3. Proclamation declaring November 2006 as *Help the Homeless by Dining Out Month*.

City Manager Comments:

1. Registered voters may vote in the City Clerk Office from now through Election Day.
2. This Saturday, October 28, City staff and neighbors are having an All Crew Day to clean out storm drains, 9:00 a.m. to noon at the Corp. Yard.
3. On October 31, at 1:30 p.m., there will be a ribbon cutting ceremony at the new fire station at 3000 Shasta Road.
4. On November 8, the school district and City are co-sponsoring an event on how families can address alcohol and drug abuse issues. 6:30 p.m., 2701 Martin Luther King Way.
5. On Saturday, November 11th, there is an all-day, ASUC-sponsored event, called the Berkeley Project, where a thousand students are volunteering at various city services.
6. Recognition and thanks to Tom Myers, who is retiring this Friday, for the many years of dedicated service to the City.

Public Comment

Consent Calendar

Action: Moved, seconded, carried (Moore/Anderson) to adopt the Consent Calendar in one motion except as indicated:

1. **Affordable Housing Mitigation Fee** (*First reading October 10, 2006. Absent – Maio*)

From: City Manager

Recommendation: Adopt second reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 21.28.065.B. to establish a sliding scale reduction in the maximum affordable housing mitigation fee for conversion of rental property to condominiums by owner-occupants.

Financial Implications: See report

Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Ordinance No. 6,950–N.S. Effective November 23, 2006.

Consent Calendar

- 2. Major Residential Additions** *(First reading October 10, 2006. Absent – Maio)*
From: Councilmember Worthington
Recommendation: Adopt second reading of an Ordinance amending Ordinance No. 6,949-N.S. to exempt certain residential additions.
Financial Implications: None.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Actions: Removed from the Consent Calendar by Councilmember Maio. Moved, seconded, (Worthington/Moore) a main motion to rescind the first reading with the intent of adopting a new first reading with a revised date of October 26, 2006. Moved, seconded, carried (Capitelli/Maio – Noes – Moore, Anderson, Worthington; Abstain – Spring) to adopt Ordinance No. 6,951–N.S. as written. Effective November 23, 2006.
- 3. Minutes for Approval**
From: City Manager
Recommendation: Approve minutes of the following meetings: a) September 18, 2006 (closed); b) September 19, 2006 (regular); c) September 26, 2006 (closed); d) September 26, 2006 (regular).
Financial Implications: None
Contact: Sherry M. Kelly, City Clerk, 981-6900
Action: Approved minutes.
- 4. Contract: Meter and Pre-sort Services for Outgoing Mail**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into a contract and any amendments with Quick Sort Mailing Services for metering and pre-sort service for outgoing mail from November 1, 2006 through June 30, 2009, for a total amount not to exceed \$400,000.
Financial Implications: See report
Contact: Robert Hicks, Finance, 981-7300
Action: Adopted Resolution No. 63,452–N.S.
- 5. Contract: Uniform Rental and Laundry Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into a contract and any amendments with Aramark Uniform Services to provide rental and laundering of uniforms, walk-off mats, towels, and miscellaneous items for various departments, as needed from July 1, 2006 through June 30, 2008, in an amount not to exceed \$150,000 per year.
Financial Implications: Various Funds - \$150,000
Contact: Robert Hicks, Finance, 981-7300
Action: Adopted Resolution No. 63,453–N.S.

6. Formal Bid Solicitations and Request for Proposals

From: City Manager

Recommendation: Approve the request for proposals (RFP) that will be issued upon final approval by the requesting department.

Financial Implications: Various Funds - \$245,000

Contact: Robert Hicks, Finance, 981-7300

Action: Approved recommendation.

7. National Incident Management System

From: City Manager

Recommendation: Adopt a Resolution approving the National Incident Management System (NIMS) as the City's official all-hazards incident response system to prevent, prepare for, respond to, and recover from disasters, regardless of cause, size or complexity.

Financial Implications: None.

Contact: Debra Pryor, Fire Chief, 981-5500

Action: Adopted Resolution No. 63,454–N.S.

8. Contract: Financial Advisory and Technical Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with The National Development Council (NDC) for financial advisory and technical services to increase the contract amount by \$21,000 for an amount not to exceed \$45,500.

Financial Implications: See report

Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Resolution No. 63,455–N.S.

9. Contract: Financial Consulting Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with Seifel Consulting, Inc. for financial consulting services to increase the contract amount by \$50,000 for an amount not to exceed \$140,000

Financial Implications: See report

Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Resolution No. 63,456–N.S.

10. Contract: Peer Review Construction Cost Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with Dabri, Inc. for financial peer review services to increase the contract amount by \$26,700 for an amount not to exceed \$40,800.

Financial Implications: See Report

Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Resolution No. 63,457–N.S.

- 11. Contract: Peer Review Waterproofing Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with McGinnis Chen Associates, Inc. for peer review services to increase the contract amount by \$18,000 for an amount not to exceed \$36,000.
Financial Implications: See report
Contact: Stephen Barton, Housing, 981-5400
Action: Adopted Resolution No. 63,458–N.S.
- 12. Personnel Rules and Regulations**
From: City Manager
Recommendation: Adopt a Resolution amending Resolution No. 60,776-N.S, the Personnel Rules and Regulations, to add language in Section 9 (Method of Filling Vacancies) to establish an administrative procedure for internal promotion through a non-competitive personnel action for employees working in classification series that require professional licensure, certification or registration.
Financial Implications: None
Contact: David W. Hodgkins, Human Resources, 981-6800
Action: Adopted Resolution No. 63,459–N.S.
- 13. Grant Application: Workforce Housing Reward Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to accept a \$242,626 Workforce Housing Reward Program grant from the State of California, Department of Housing and Community Development; and to execute the resultant revenue agreement and any amendments for community improvements, including Francis Albrier Center.
Financial Implications: See report
Contact: Dan Marks, Planning and Development, 981-7400
Action: Adopted Resolution No. 63,460–N.S.
- 14. Contract: Marina Dock H-I Replacement Project *(to be delivered)***
From: City Manager
Recommendation: Adopt a Resolution approving plans and specifications for the Berkeley Marina Dock H-I Replacement Project, Specifications No. 05-10011-C (rebid); accepting the bid of the lowest responsible bidder to be determined on completion of negotiations; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$3,569,366 for a period of 240 calendar days from the date of the execution of the contract.
Financial Implications: Various Funds - \$3,569,366
Contact: Claudette Ford, Public Works, 981-6300
Action: Adopted Resolution No. 63,461–N.S.

- 15. Contract: On-Call Storm Drain Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with J. F. Pacific Liners, Inc., adding to the scope of services, increasing the amount from \$24,500 to an amount not to exceed \$50,000, and extending the term to December 31, 2007.
Financial Implications: Capital Improvement Fund - \$25,100
Contact: Claudette Ford, Public Works, 981-6300
Action: Adopted Resolution No. 63,462–N.S.
- 16. Major Encroachment Permit for David Brower Center Solar Panels**
From: City Manager
Recommendation: Adopt a Resolution authorizing the issuance of a major encroachment permit to Equity Community Builders, L.L.C., to encroach upon the public right-of-way on the north side of Allston Way for the installation of solar panels for the David Brower Center, conditional to acceptance of design and approval by the City Engineer.
Financial Implications: None
Contact: Claudette Ford, Public Works, 981-6300
Action: Adopted Resolution No. 63,463–N.S.
- 17. 2006-2007 Volunteer Champions Campaign**
From: Mayor Bates
Recommendation: Refer to the City Manager the development of an annual campaign that promotes and publicizes employee volunteerism in the community, especially volunteerism with Berkeley’s youth and families.
Financial Implications: None
Contact: Tom Bates, Mayor, 981-7100
Action: Approved recommendation.
- 18. Opposition To New Homeland Security Rules Regarding “No Match” Letters**
From: Mayor Bates and Councilmember Worthington
Recommendation: Adopt a Resolution opposing new Department of Homeland Security rules that would hold employers liable for violating immigration law if they continue to employ workers who receive “no-match” letters from the Social Security Administration.
Financial Implications: None
Contact: Tom Bates, Mayor, 981-7100, Kriss Worthington, Councilmember District 7, 981-7170
Action: Adopted Resolution No. 63,464–N.S.
- 19. Funding for Ecology Center’s Environmental Summit** *(held over from October 10, 2006 by Mayor Bates)*
From: Mayor Bates
Recommendation: Adopt a Resolution authorizing \$500 from the Mayor’s discretionary budget to the Ecology Center to help fund their first annual Environmental Summit.
Financial Implications: Mayor’s Office Budget - \$500
Contact: Tom Bates, Mayor, 981-7100
Action: Adopted Resolution No. 63,465–N.S.

Consent Calendar

20. **Funding for Ecology Center** *(held over from October 10, 2006 by Mayor Bates)*
From Councilmember Maio
Recommendation: Adopt a Resolution authorizing \$2,000 in FY 2006 carryover funds from Councilmember Maio's office budget to the Ecology Center for Berkeley EcoHouse.
Financial Implications: Councilmember Maio's Office Budget - \$2000
Contact: Linda Maio, Councilmember District 1, 981-7110
Action: Adopted Resolution No. 63,466–N.S.
21. **City Auditor's Duties and Authority**
From: City Auditor
Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 2.24 giving all auditor job classifications the authority to issue administrative citations for violations of City ordinances.
Financial Implications: See report
Contact: Ann-Marie Hogan, City Auditor, 981-6750
Action: Adopted first reading of Ordinance. Second reading scheduled for November 14, 2006.
22. **Appointment to the Mental Health Commission**
From: Mental Health Commission
Recommendation: Adopt a Resolution appointing Robin M. Williams to the Mental Health Commission, as a representative of the General Public Interest Category, for a three-year term beginning October 25, 2006 and ending October 24, 2009.
Financial Implications: None
Contact: Carol Patterson, Secretary, Mental Health Commission, 981-5217
Action: Adopted Resolution No. 63,467–N.S.
23. **Regional Composting Facility**
From: Zero Waste Commission
Recommendation: Support and participate in a proactive countywide process to identify appropriate in-county locations for future composting facilities.
Financial Implications: None
Contact: Tania Levy, Secretary, Zero Waste Commission, 981-6368
Action: Approved recommendation.

Action Calendar – Old Business

24. **1201 San Pablo Avenue / 1100 Harrison Street** (*Public hearing closed on September 19, 2006. Re-opened on October 10, 2006 and October 16, 2006 and continued to this meeting.*)

a. Supplemental Reports from City Manager

1. October 24, 2006 (*to be delivered*)
2. October 16, 2006
3. July 18, 2006

Contact: Dan Marks, Planning and Development, 981-7400, Manuela Albuquerque, City Attorney, 981-6950

b. From: City Manager (*July 18, 2006*)

Recommendation: Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Use Permit No. 05-10000029 to construct a 30-unit, mixed-use project, and dismissing the appeal.

Financial Implications: None

Contact: Dan Marks, Planning and Development, 981-7400

c. Appeal (*July 18, 2006*)

1. Susan Pinto and Kain/Stannage Neighbors who also join in the appeal.

d. Communications (*July 18, 2006*)

1. James E. Hart
2. 1201 San Pablo Appellants

e. Communications (*September 19, 2006*)

1. Stephen Wollmer

f. Supplemental Communications (*September 19, 2006*)

1. Jim Hart – Revised Proposal
2. 1201 San Pablo/1100 Harrison Appellants (2)
3. Stephen Wollmer
4. Scott, Kelli and Nathan Bodensteiner
5. Jim Hart – Drawing
6. Mary Wyand

g. Supplemental Communications (September 26, 2006)

1. Jim Hart – Revised Application
2. Prakash Pinto
3. Daniel W. Corvello
4. Mary Wyand
5. Beth Bernstein
6. Jean Molesky
7. Yvette Bozzini
8. Uile Cuileannain
9. Mary Wyand for Erika Lamm
10. Jim Hart
11. Rena Rickles
12. Don Mill
13. Rempel Architects

Action Calendar – Old Business

- h. Communications** (*October 10, 2006*)
 - 1. Jim Hart
- i. Supplemental Communications** (*October 10, 2006*)
 - 1. 1201 San Pablo / 1100 Harrison Appellants
 - 2. Mary Wyand
 - 3. Jim Hart
 - 4. Steven Donaldson
 - 5. Mary Wyand
 - 6. Rena Rickles
- j. Supplemental Communications** (*October 16, 2006*)
 - 1. Jim Hart- (Revised compromise plan)
- k. Communications** (*October 24, 2006*)
 - 1. Barbara Gilbert
 - 2. Stephen Wollmer

Action: Moved, seconded, carried (Capitelli/Maio) to adopt Resolution No. 63,468–N.S. affirming the decision of the Zoning Adjustments Board with amended conditions of approval and denying the appeal.

Action Calendar – Appeals

25. Zoning Adjustments Board Appeal: 1017 Miller Avenue

a. From: City Manager

Recommendation: Adopt a Resolution affirming the decision of the Zoning Adjustments Board to adopt a Mitigated Negative Declaration for the proposed project at 1017 Miller Avenue, and approving the Use Permit #06-10000010 for the proposed single family residential structure with an accessory dwelling unit and two parking spaces and dismissing the appeal.

Financial Implications: None

Contact: Dan Marks, Planning and Development, 981-7400

b. Appeal

- 1. Leo and Ingrid Vallely

c. Communications

- 1. Ellen Rodin
- 2. Karen and Mark Springer
- 3. Michael Irwin and Charlene Stern
- 4. Peter Hirschfeld
- 5. Sarita Waite
- 6. Ellen Rodin
- 7. Joan Martin
- 8. Gerd H. Ilg

Action: Moved to the Consent Calendar by Councilmember Moore and adopted Resolution No. 63,469–N.S. affirming the decision of the Zoning Adjustments Board and denying the appeal.

Action Calendar – Public Hearing

26. **UC Memorial Stadium Landmark Designation California Memorial Stadium**
From: City Manager
Recommendation: Open the public hearing on the Appeal of the Landmarks Preservation Commission Notice of Decision (NOD) for the University of California (UC) Memorial Stadium Landmark Designation, and upon conclusion, adopt a Resolution denying the Landmark Designation without prejudice, and send the landmark application back to the Landmarks Preservation Commission with specific direction to change the area of the site identified as within the "Boundary of Proposed Landmark Site", to make any text adjustments needed to reconcile the text with the new boundaries, and to consider changes to address the three text differences identified in Table 1.
Fiscal Implications: None
Contact: Dan Marks, Planning and Development, 981-7400
Public Testimony: The Mayor opened the public hearing. 7 speakers. Moved, seconded, carried (Olds/Worthington) to close the public hearing.
Action: Moved, seconded, carried (Wozniak/Worthington) to adopt Resolution No. 63,470–N.S. affirming the decision of the Landmarks Preservation Commission based on the findings made by the LPC, adopted by reference.

Action Calendar – Old Business

27. **2116 Allston Way, Gaia Building: Implementation of Cultural Use Requirements** (*held over from October 10, 2006 by Mayor Bates*)
From: City Manager
Recommendation: Accept the June 13, 2006 letter from Panoramic Interests as the implementation plan to prioritize cultural uses at the Gaia Arts Center, terminate the Zoning Adjustments Board's revocation proceedings, and direct staff to report on the schedule of events in one year.
Financial Implications: None
Contact: Dan Marks, Director, Planning and Development, 981-7400
Actions: Moved, seconded, (Spring/Anderson) a main motion to remand the matter to the Zoning Adjustments Board to come up with definitions and work out details of an implementation plan. Moved, seconded, carried (Maio/Capitelli; Noes – Worthington; Abstain – Moore, Spring, Olds) continuing the matter to November 14, 2006.
28. **Solar Panel Permit Fees** (*held over from October 10, 2006 by Councilmember Spring*)
From: Councilmember Spring
Recommendation: Adopt a policy waiving permit fees on solar panels as a local incentive to encourage solarization with funding for the waivers to come from utility users tax revenues.
Financial Implications: See report
Contact: Dona Spring, Councilmember District 4, 981-7140
Action: Moved to the Consent Calendar by Councilmember Moore and approved referring to the budget process.

Action Calendar – New Business

29. **Borrowing Funds and Sale and Issuance of FY 2007 Tax and Revenue Anticipated Notes**

From: City Manager

Recommendation: Adopt a Resolution ratifying Council's action on October 10, 2006 adopting Resolution No. 63,455-N.S. approving the borrowing of \$25,000,000 and the sale and issuance of FY 2006-07 Tax and Revenue Anticipation Notes.

Financial Implications: General Fund - \$25 Million

Contact: Robert Hicks, Finance, 981-7300

Action: Moved to the Consent Calendar by Councilmember Moore and adopted Resolution No. 63,471-N.S.

30. **Specific Standards For Care of Dogs Kept Outdoors**

a. From: Citizens Humane Commission

Recommendation: Adopt first reading of an Ordinance adding Berkeley Municipal Code (BMC) Section 10.04.140, specifying requirements for minimum standards of care for owners/guardians who keep dogs outdoors.

Financial Implications: None

Contact: Kate O'Connor, Secretary, Citizens Humane Commission, 981-6601

b. From: City Manager

Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) by adding Section 10.04.140, as proposed by the Citizens Humane Commission with minor revisions to Section 10.04.140(G).

Financial Implications: None

Contact: Jim Hynes, Animal Services, 981-7000

Action: Moved to the Consent Calendar by Councilmember Moore and adopted first reading of Ordinance as proposed by the Commission and revised by the City Manager. Second reading scheduled for November 14, 2006.

Information Reports

31. **Berkeley Alcohol Policy Advisory Coalition (BAPAC) Proposals**

From: City Manager

Contact: Manuela Albuquerque, City Attorney, 981-6950

Action: Received and filed.

32. **Investment Report: Quarters Ended June 30, 2006 and September 30, 2006**

From: City Manager

Contact: Robert Hicks, Finance, 981-7300

Action: Received and filed.

Information Reports

33. **Status Update of Oxford Plaza and David Brower Center** *(to be delivered)*
From: City Manager
Contact: Stephen Barton, Housing, 981-5400
Action: Report not delivered. Removed from the Agenda by the City Manager.
34. **Quarterly Report on Employee Safety and Workers' Compensation**
From: City Manager
Contact: David W. Hodgkins, Human Resources, 981-6800
Action: Received and filed.
35. **Unrepresented Temporary Employees**
From: City Manager
Contact: David W. Hodgkins, Human Resources, 981-6800
Action: Received and filed.
36. **Landmarks Preservation Committee Notice Of Decisions: 1) 1 Cyclotron (Landmark)
2) 3027 Adeline (Landmark) 3) 2811 Benvenue (Landmark)**
From: City Manager
Contact: Dan Marks, Planning and Development, 981-7400
Action: Moved to Action by Councilmember Wozniak. Directed staff to correct address description in Notice of Decision for Bevetron. Received and filed.
37. **Marin Avenue Traffic Study Report**
From: City Manager
Contact: Claudette Ford, Public Works, 981-6300
Action: Moved to Action by Councilmember Olds. Received and filed.

Communications

Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record.

Save the Oaks – UC Memorial Stadium

(Numerous email communications submitted in a substantially similar format are on file in the City Clerk Department.)

Berkeley City College

1. Mark McLeod and Deborah Badhia (DBA)

Clean Air Performance

2. Charlie Peters

Educational Standards

3. Barbara Gilbert

New Light Senior Center

4. Joy Holland

Supplemental Communications 1

Item 18: Opposition To New Homeland Security Rules Regarding “No Match” Letters

5. AFSCME Local 3299, Berkeley Organizing Congregations for Action (BOCA), Xinaxtli, and other community members (206 signatories)

Item 24: 1201 San Pablo Avenue / 1100 Harrison Street

6. Don Mill (final drawing)

Item 26: UC Memorial Stadium Landmark Designation California Memorial Stadium

7. Shirley Dean

Item 27: 2116 Allston Way, Gaia Building: Implementation of Cultural Use Requirements

8. Anna de Leon

Item 28: Solar Panel Permit Fees

9. Councilmember Spring

Item 36: Landmarks Preservation Committee Notice Of Decisions: 1) 1 Cyclotron (Landmark) 2) 3027 Adeline (Landmark) 3) 2811 Benvenue (Landmark)

10. L.A. Wood (2)

Supplemental Communications 2

Item 2: Major Residential Additions

11. Alan and Aleyda Swain

Item 24: 1201 San Pablo Avenue / 1100 Harrison Street

12. San Pablo Appellants

Item 26: UC Memorial Stadium Landmark Designation California Memorial Stadium

13. John English

14. Wendy P. Markel

Item 27: 2116 Allston Way, Gaia Building: Implementation of Cultural Use Requirements

15. Councilmember Maio (proposed Resolution)

Complaint – 1310 Campus Drive

16. Rosalina Gutman

Action: Referred to the City Manager for a report on November 14, 2006.

Adjournment

Adjourned at 10:09 p.m.

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. 1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*